

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 3:19cr138-CWR

NELSON EVARISTO LOPEZ-OROZCO

**Motion to Require Initial Appearance
in District of Arrest**

Comes now Defendant Nelson Evaristo Lopez-Orozco and files this Motion to Require Initial Appearance in District of Arrest. In support of this Motion, Defendant presents the following:

On August 7, 2019, officers with United States Immigration and Customs Enforcement (hereinafter “ICE”) administratively detained hundreds of purported undocumented workers within the borders of the Southern District of Mississippi. The Defendant was one of the detainees. Thereafter, ICE transported the Defendant to a holding facility in Jena, Louisiana.

On August 15, the prosecution filed a Criminal Complaint against the Defendant, and on August 19, 2019, a federal grand jury returned an Indictment against the Defendant. Then on August 19, 2019, the Court issued a Warrant for the Defendant’s arrest. The Defendant was still detained in Jena on the date the Court issued the Warrant.

On August 19, 2019, the date the Warrant was issued, the Defendant was effectively detained in Jena, Louisiana, which is not within the boundaries of the Southern District of Mississippi. This raises the question of where the Defendant's initial appearance and arraignment should be conducted. Based on reliable information, the undersigned believes that the Defendant will be transported from Jena to the Northern Division of the Southern District of Mississippi, and that the Defendant's initial appearance / arraignment will be conducted in there. For the following reason, the Defendant objects to having the initial appearance / arraignment in the Southern District of Mississippi.

Rule 5(c)(2) of the Federal Rules of Criminal Procedure is titled "Arrest in a District Other Than Where the Offense Was Allegedly Committed." This code section states:

If the defendant was arrested in a district other than where the offense was allegedly committed, the initial appearance must be:

(A) in the district of arrest; or

(B) in an adjacent district if:

(i) the appearance can occur more promptly there; or

(ii) the offense was allegedly committed there and the initial appearance will occur on the day of arrest.

Id.

When the Arrest Warrant was issued, the Defendant was in custody in Jena, Louisiana. Under Rule 5(c)(2)(A), the initial appearance / arraignment should occur in the district where Jena is located, unless the exceptions in Rule

5(c)(2)(B)(i) or (ii) are met. There has been no showing that either of those exceptions apply.

We note that the federal courthouse closest to Jena, Louisiana is in Alexandria, Louisiana. Jena and Alexandria are about 38 miles apart, as the road lies. Both Jena and Alexandria are within the boundaries of the Western District of Louisiana.

For all of these reasons, the Defendant moves the Court to require the initial appearance / arraignment before a magistrate in the federal courthouse in Alexandria, Louisiana.

WHEREFORE, Defendant Nelson Evaristo Lopez-Orozco respectfully asks this Court to grant this Motion to Require Initial Appearance in District of Arrest.

Respectfully submitted, this the 21st day of August, 2019.

Omodare B. Jupiter

Omodare B. Jupiter (Miss. Bar # 102054)

Federal Public Defender

N. and S. Districts of Mississippi

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Attorney for Defendant

CERTIFICATE OF SERVICE

I, Omodare B. Jupiter, certify that on August 21, 2019, this Motion was filed with the Clerk of the United States District Court for the Southern District of Mississippi, using the electronic case filing system, which in turn sent an electronic copy of this Motion to all attorneys of record in this case.

Omodare B. Jupiter

Omodare B. Jupiter

Attorney for Defendant